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In The
Supreme Court of the United States
OCTOBER TERM, 1951

No. 607

STANOLIND OIL & GAS COMPANY,
Petitioner,

VERSUS

WEST EDMOND HUNTON LIME UNIT,
A body politic and corporate,
Respondent.

MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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MARCH, 1952.

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The only question presented by the Petition for Writ of Certiorari is whether or not petitioner is entitled to another trial in order that it may have another opportunity to explore a phase of the case which petitioner neglected at the first trial. Since the complete answer to petitioner's complaint concerning the judgment of the court below is found in the Record, this memorandum will be confined to discussion of the facts.

This action was commenced by respondent in a State court of Oklahoma to enjoin petitioner from continuing to use a certain oil and gas well, respondent claiming to be entitled to exclusive possession of the well and its appurtenant equipment. After removal proceedings, trial in the United States District Court for the Western District of Oklahoma resulted in a judgment for petitioner. On appeal that judgment was reversed by the United States Court of Appeals for the Tenth Circuit, with direction to enter judgment for respondent granting the injunctive relief prayed for.

As noted in petitioner's statement, respondent was created under the so-called "unitization statute" of the State of Oklahoma (Sections 286.1 to 286.17, Title 52, Okl. Stat. Ann.). This statute was enacted in 1945 as a conservation measure designed to make possible the unitized operation of an entire reservoir or common source of supply of oil and gas, in order that a greater recovery might be had for the benefit of all interest owners. Under unitization, royalty interests and operating rights in separately owned tracts of land are pooled or "unitized" so that the owners of interests in a particular tract share in production from the entire reservoir instead of receiving all of the oil and gas produced from their tract. The owner of the operating rights in a particular tract, instead of bearing all the expenses incurred on that tract, bears a proportionate share of the expenses

incurred in development and operation of the entire reservoir.

Administration of the unitization statute is entrusted to the Oklahoma Corporation Commission, which is authorized to order creation of a unit, after notice and hearing upon application filed by lessees (*i.e.*, owners of oil and gas leases or other operating rights) of lands within the area being unitized. In creating a unit the Commission must prescribe or approve "a plan of unitization" which in effect is the charter of the unit. The statute requires the plan of unitization to include suitable provisions on such matters as the following:

(a) Apportionment of production among the separately owned tracts within the unit area in such manner as to permit each interest owner to receive his fair and equitable share of unit production.

(b) The apportionment of expenses incurred in the unitized operation among the lessees of the separately owned tracts within the unit area.

(c) The procedure and basis upon which wells, equipment and other properties of the several lessees are to be taken over and used for the unitized operation, with suitable provision for adjustment of investments made therein by the several lessees.

(d) Creation of an operating committee to have "general over-all management and control of the unit and the conduct of its business and affairs," each lessee within the unit area being entitled to representation on the operating committee, with a voting interest proportionate to his interest in the unit.

A unit thus created is, in the words of the statute, a "body politic and corporate." Its governing body is the operating committee provided for in its plan of unitization, and its members are lessees or owners of operating rights in the unitized reservoir.

The facts concerning creation of respondent and the drilling and dual completion of the well here in question were stipulated (R. 19, *et seq.)*. Copy of the Corporation Commission order creating respondent, and copy of the plan of unitization approved in connection therewith were attached as exhibits to the Answer filed by petitioner in the trial court. Respondent was created by the Corporation Commission Order entered July 29, 1947, for the unitized operation of the Hunton Lime Formation, a reservoir of oil and gas in the West Edmond Field, Oklahoma. Unitization became effective October 1, 1947, at which time respondent took over the operation and further development of the unitized reservoir. The plan of unitization provided for conduct of operations through a "unit operator" under respondent's direction. With respect to wells drilled into the unitized reservoir prior to the effective date of unitization, the plan provided (R. 23-25):

(a) That the lessees would "deliver possession" of such wells and all lease and other equipment used in the operation thereof to the unit operator.

(b) That each lessee contributing a well would receive a credit of $50,000 as the intangible value

thereof, every forty-acre tract not contributing a well to be charged a percentage of the total of such credits.

(c) That well equipment such as casing, tubing, derricks, tanks, separators, etc. would be inventoried and valued, and adjustments made among the lessees to the end that each lessee "instead of separately owning the equipment delivered to the unit" by such lessee "will have exchanged the same for an undivided interest in and to all the equipment so taken over and acquired by the unit, and will have paid or have been paid, as the case may be, for any difference in value."

The well here in question was completed by petitioner in 1945 as a well producing from the Hunton Lime Formation within the unit area affected by creation of respondent. Application for creation of respondent was filed with the Corporation Commission on January 29, 1947, and 13 days prior thereto petitioner applied to that Commission for permission to effect dual completion of its well, in order that the same well might be used to produce gas from the Bartlesville Sand Formation and oil from the Hunton Lime Formation, the two formations being separated by an interval of about 280 feet (R. 20). However, the dual completion was not effected until April, 1947, and prior thereto on February 24, 1947, petitioner executed and thus assented to the plan of unitization later approved by the Corporation Commission in creating respondent (R. 21).

When unitization became effective on October 1, 1947, there were 737 wells producing from the Hunton Lime Formation within the unit area, only 5 of which had been dually completed. On September 24, 1947, before unitization became effective, respondent's operating committee held a meeting at which consideration was given to these dually completed wells, with the result that temporary permission was granted for use thereof for Bartlesville gas production (R. 52). From time to time the operating committee extended the permission thus granted until, at a meeting held on July 12, 1949, respondent's operating committee terminated such permission and ordered the dually completed wells surrendered for production from the Hunton Lime Formation only (R. 61-62).

In the adjustment for wells and equipment provided for in the plan of unitization, petitioner received full credit for the well here in question and the equipment appurtenant thereto, without any deduction by reason of its dual completion (R. 93). By virtue of this adjustment, since petitioner's total interest in the unit was slightly less than ten per cent, petitioner's *ownership* in the well and its appurtenant equipment was reduced to an undivided interest of slightly less than ten per cent (R. 29). Ownership of the remaining undivided interest of about ninety per cent, and ninety per cent of the burden of investment in the well, were transferred to other lessees of the unit. Admittedly, respondent has no

"title" to the well or its equipment, the title being vested in all lessees of the unit and respondent's right being limited to rights of possession and use.

The trial court based its judgment for petitioner on the doctrine of comparative injury or balancing of conveniences, finding that use of the well in question for Bartlesville gas production was more valuable than use thereof for Hunton Lime production. The trial court also found that respondent's right was one of possession for a limited purpose and that all other rights were "reserved" to petitioner (R. 74). In reversing and directing judgment for respondent, the Court of Appeals concluded that respondent's operating committee had the power to determine whether or not petitioner should be permitted to use the well for Bartlesville production and that the province of the court was "limited to a determination whether the asserted power is arbitrary, capricious and without any rational basis in fact" (R. 163). Petitioner's only complaint concerning the judgment of the court below is that no evidence was introduced in the trial court concerning the reasonableness of the action taken by respondent's operating committee, and therefore petitioner is entitled to a new trial in order that it may have opportunity to submit such evidence. This is not a fair statement of the evidence introduced.

Petitioner plead that a judgment requiring surrender of the well would be inequitable. This defense placed in issue all things which would cause respondent's position

to be considered inequitable. At the trial, petitioner produced a petroleum engineer who testified that respondent did not need the well to produce oil from the Hunton reservoir; that petitioner's use of the well did not interfere with respondent's use thereof; that the dual completion added no hazard to the operation and that respondent would lose but little oil if denied the use of the well. (See the testimony of Darl D. Gillespie, Tr. 120 to 136.) Respondent offered evidence to prove the Unit's need for the well. (See the testimony of Frank H. Willibrand, a petroleum engineer, Tr. 95 to 120.) Mr. Willibrand testified that petitioner's control thereof interfered with the Unit's use; that the Unit needed the well to produce Hunton oil; that Hunton oil would be lost to the Unit if it was denied the use of the well. All this evidence was pointed at the issue of whether respondent had a rational basis in fact for requiring delivery to it of the well. It was after a review of this evidence that the Circuit Court reached the conclusion that the action of the Unit Operating Committee in requiring delivery of the well to the Unit was not arbitrary or capricious.

The ultimate issue presented in this case is whether or not respondent is entitled to possession of the well in dispute, to the exclusion of petitioner. The *fact* that respondent's operating committee had considered the matter and ordered surrender of the well to respondent was brought into the case by stipulation at respondent's in-

stance, as evidence bearing on the ultimate issue, respondent's position being that the action of the operating committee was binding on petitioner. In the trial court petitioner elected to base its defense in equity and on the assertion of an absolute right of which petitioner could not be deprived by any action of the operating committee. The latter defense made the actions taken by respondent's operating committee immaterial. The first defense was decided adversely to petitioner by the Circuit Court.

The rule announced by this Court in *Saunders* v. *Shaw et al.*, 244 U.S. 317, has no application in these circumstances. On trial of that case the plaintiff below had introduced evidence which the trial court later excluded as inadmissible under the pleadings, and solely because of this ruling an intervening defendant omitted to proffer evidence contradicting that which had been introduced by plaintiff. On appeal the State Supreme Court reversed the trial court and entered judgment for the plaintiff below on the basis of the evidence which had been excluded by the trial court. This Court, in reversing and ordering a new trial, held that the intervening defendant had no duty to proffer evidence in opposition to other evidence that had been ruled out by the trial court.

On trial of the instant case the fact that respondent's operating committee had acted was not ruled out by the trial judge at any time. Until the trial court handed

down his decision, neither petitioner nor respondent knew to what extent the decision might be governed by that fact. Hence, petitioner's omission to offer evidence concerning the reasonableness of the operating committee's action, was not based on any ruling made by the trial court or any position taken by respondent. Instead, petitioner's omission was based on its own view of its rights.

Petitioner therefore seeks a new trial solely because the Court of Appeals placed on respondent's plan of unitization an interpretation different from that contended for by petitioner and adopted by the trial court. As stated by this Court in *Helis* v. *Ward et al.*, 308 U.S. 365, also relied on by petitioner:

> "The fact that the case was tried by the district court on an interpretation of the contract different from that of the Circuit Court of Appeals is not *per se* sufficient to cause a remand for a new trial under the rule of *Saunders* v. *Shaw, supra.*"

Unlike the injured parties in the *Saunders* and *Helis cases*, petitioner relied in the trial court on a defense chosen by it with full knowledge of respondent's position, and not upon a defense forced upon it by the trial court. Petitioner therefore has had its day in court with ample opportunity to present every defense available to it. The Petition for Writ of Certiorari should therefore be denied.

Respectfully submitted,

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MARCH, 1952.